

105TH CONGRESS
1ST SESSION

S. 1500

To amend the Hawaii Tropical Forest Recovery Act to establish voluntary standards for certifying forest products cultivated, harvested, and processed in tropical environments in Hawaii and to grant a certification for Hawaii tropical forest products that meet the voluntary standards, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 9, 1997

Mr. AKAKA introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To amend the Hawaii Tropical Forest Recovery Act to establish voluntary standards for certifying forest products cultivated, harvested, and processed in tropical environments in Hawaii and to grant a certification for Hawaii tropical forest products that meet the voluntary standards, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Hawaii Tropical Forest
5 Products Certification Act”.

1 **SEC. 2. HAWAII TROPICAL FOREST PRODUCTS CERTIFI-**
 2 **CATION.**

3 The Hawaii Tropical Forest Recovery Act (Public
 4 Law 102–574; 106 Stat. 4593) is amended by inserting
 5 after section 4 the following:

6 **“TITLE II—HAWAII TROPICAL**
 7 **FOREST PRODUCTS CERTIFI-**
 8 **CATION**

9 **“SEC. 201. PURPOSES.**

10 “The purposes of this title are—

11 “(1) to establish voluntary standards for cer-
 12 tifying forest products cultivated, harvested, and
 13 processed in tropical environments in Hawaii; and

14 “(2) to grant a certification for Hawaii tropical
 15 forest products that meet the voluntary standards.

16 **“SEC. 202. DEFINITIONS.**

17 “In this title:

18 “(1) **AFFILIATED PERSON.**—The term ‘affili-
 19 ated person’ means, with respect to a person—

20 “(A) the spouse of the person, minor child
 21 of the person, or guardian of the minor child of
 22 the person, except that a spouse who establishes
 23 to the satisfaction of a certifying agent that op-
 24 erations of the person and spouse are main-
 25 tained separately and independently shall not be
 26 considered an affiliated person; and

1 “(B) a partnership, joint venture, or other
2 enterprise in which the person or any other per-
3 son described in subparagraph (A) has an own-
4 ership interest or financial interest, unless the
5 certifying agent determines that the interest is
6 a minor interest held by another business enter-
7 prise.

8 “(2) BIOLOGICAL DIVERSITY.—The term ‘bio-
9 logical diversity’ means variability among living or-
10 ganisms and the ecological complexes that the orga-
11 nisms inhabit, including diversity within a species,
12 between species, and of ecosystems.

13 “(3) COVERED PERSON.—The term ‘covered
14 person’ means a producer, processor, owner, har-
15 vester, or handler of a forest product cultivated in
16 a tropical environment in Hawaii.

17 “(4) CULTIVATE.—The term ‘cultivate’ means
18 to prepare and work on land in order to produce a
19 forest product.

20 “(5) FOREST PRODUCT.—The term ‘forest
21 product’ means a tree or other plant harvested to
22 produce a marketable product.

23 “(6) GOVERNOR.—The term ‘Governor’ means
24 the Governor of the State of Hawaii, a designee of

1 the Governor, or an agency designated by the Gov-
2 ernor.

3 “(7) HARVEST.—The term ‘harvest’ means the
4 removal, in whole or in part, of a forest product
5 from the location where the product was cultivated.

6 “(8) LABEL.—The term ‘label’ means the dis-
7 play of written, printed, or graphic matter on or at-
8 tached to a forest product.

9 “(9) PROCESS.—The term ‘process’ means to
10 use a process or method to modify or convert a for-
11 est product into a marketable product.

12 “(10) PROCESSOR.—The term ‘processor’
13 means any person engaged in the business of proc-
14 essing a forest product.

15 “(11) PRODUCER.—The term ‘producer’ means
16 an owner, operator, landlord, tenant, or share-
17 cropper who shares in the risk of producing a forest
18 product and who is entitled to share in the forest
19 product available for marketing, or would have
20 shared had the forest product been produced.

21 “(12) PROPRIETARY BUSINESS INFORMA-
22 TION.—The term ‘proprietary business information’
23 means information that relates to a trade secret,
24 process, operation, or commercial or financial infor-
25 mation the disclosure of which is likely to have the

1 effect of causing substantial harm to the competitive
2 position of the person from whom the information
3 was obtained.

4 “(13) SECRETARY.—The term ‘Secretary’
5 means the Secretary of Agriculture.

6 “(14) SELL.—The term ‘sell’ includes any sale,
7 exchange, contract to sell, consignment for sale,
8 shipment for sale, or other disposition.

9 “(15) STEWARDSHIP.—The term ‘stewardship’
10 means managing land and forest products in a man-
11 ner that meets the needs of the present without com-
12 promising the ability of future generations to meet
13 their needs.

14 “(16) TROPICAL.—The term ‘tropical’ includes
15 subtropical.

16 **“SEC. 203. TROPICAL FOREST PRODUCTS CERTIFICATION**
17 **PROGRAM.**

18 “(a) IN GENERAL.—Subject to subsection (b), the
19 Secretary shall establish a certification program for cov-
20 ered persons that cultivate, harvest, or process forest
21 products in a tropical environment in Hawaii using the
22 forestry practices identified in section 204.

23 “(b) STATE PROGRAM.—In lieu of establishing a cer-
24 tification program under subsection (a), the Secretary
25 shall permit the State of Hawaii to carry out a State tropi-

1 cal forest products certification program that is consistent
2 with this title.

3 “(c) CONSULTATION.—In carrying out the program
4 established under subsection (a), the Secretary shall con-
5 sult with—

6 “(1) the Governor;

7 “(2) persons in Hawaii involved in the cultiva-
8 tion, harvesting, processing, and stewardship of
9 tropical forests and forest products; and

10 “(3) other interested parties.

11 “(d) CERTIFYING AGENTS.—

12 “(1) IN GENERAL.—The Secretary and, if ap-
13 plicable, the Governor shall carry out the program
14 established under this title through certifying agents
15 described in section 212.

16 “(2) DUTIES.—A certifying agent shall deter-
17 mine whether a covered person that cultivates, har-
18 vests, or processes a forest product cultivated in a
19 tropical environment in Hawaii, or an operation of
20 the person, meets the requirements of this title (in-
21 cluding, if applicable, a certification program of the
22 State of Hawaii).

1 **“SEC. 204. VOLUNTARY STANDARDS FOR TROPICAL FOR-**
2 **ESTRY IN HAWAII.**

3 “(a) IN GENERAL.—To be sold or labeled as a Ha-
4 waii tropical forest product cultivated, harvested, or proc-
5 essed using practices established under this title, a covered
6 person shall—

7 “(1) comply with—

8 “(A) Federal, State, and local environ-
9 mental laws (including regulations); and

10 “(B) international treaties and agreements
11 to which the United States is a signatory;

12 “(2) conduct forestry operations based on a
13 written management plan that meets the standards
14 established under this title and under which—

15 “(A) the long-term forestry management
16 objectives, and the means for achieving the ob-
17 jectives, are clearly stated;

18 “(B) the rationale for species selection, the
19 method of harvest, and a rate of harvest that
20 can be permanently sustained, are detailed; and

21 “(C) the results of monitoring new sci-
22 entific and technical information and changing
23 environmental, social, and economic cir-
24 cumstances are used to update the management
25 plan;

1 “(3) implement forest management practices
2 that—

3 “(A) encourage the maximum efficient use
4 of multiple forest products;

5 “(B) promote the long-term social and eco-
6 nomic well-being of local communities; and

7 “(C) ensure that the rate of harvest of
8 each forest product does not exceed a level that
9 can be permanently sustained;

10 “(4) maintain—

11 “(A) biological diversity and the ecological
12 functions and integrity of the forest; and

13 “(B) except in the case of plantation for-
14 estry, the natural species mix, age classes, and
15 structure of the forest unless modifications are
16 required for the purposes of natural forest res-
17 toration;

18 “(5) conserve primary forests, mature second-
19 ary forests, and sites of major environmental signifi-
20 cance;

21 “(6) promote the regeneration, succession, and
22 diversity of native species;

23 “(7) protect rare, threatened, and endangered
24 species and their habitats, and establish adequate

1 conservation zones and protected areas where nec-
2 essary;

3 “(8) control fire and erosion, observe best man-
4 agement practices to protect watersheds and water
5 resources, and minimize forest damage during har-
6 vesting, road construction, and other types of me-
7 chanical disturbance;

8 “(9) minimize the use of alien species and, if an
9 alien species is used, carefully control and actively
10 monitor the use of the species to avoid an adverse
11 ecological impact;

12 “(10) in coordination with governmental au-
13 thorities, landowners, and persons involved in the
14 stewardship of tropical forests and forest products,
15 implement practices that eradicate, control, or mini-
16 mize the spread of alien species;

17 “(11) institute practices that maximize the use
18 of nonchemical methods of pest and weed manage-
19 ment and avoid methods of chemical control;

20 “(12) recognize and protect sites of special cul-
21 tural or religious significance to native Hawaiians;

22 “(13) conduct environmental assessments and,
23 based on the assessments, institute environmental
24 safeguards to ensure that the standards established
25 under this title are achieved;

1 “(14) in coordination with governmental au-
2 thorities, landowners, and persons involved in the
3 stewardship of tropical forests and forest products,
4 establish a program to monitor key indicators of for-
5 est health to assess the condition of the forest eco-
6 system, the yields of forest products, and the envi-
7 ronmental and social impact of management activi-
8 ties;

9 “(15) maintain sufficient documentation or
10 product identification to enable certifying agents, the
11 Secretary and, if applicable, the Governor to track
12 forest products from their origin to the point of sale
13 by a covered person;

14 “(16) maintain investments necessary for long-
15 term ecological productivity of forests;

16 “(17) demonstrate an enduring commitment to
17 adhere to the standards established under this title;

18 “(18) independently or in conjunction with
19 other forest managers, governmental agencies, or
20 persons involved in the stewardship of tropical for-
21 ests and forest products, conduct education activities
22 to increase public awareness of the importance of
23 sustainable use of forest resources;

24 “(19) in the case of a forest plantation—

1 “(A) complement the management of, re-
 2 duce pressures on, and promote the restoration
 3 and conservation of natural forests; and

4 “(B) employ species diversity to enhance
 5 economic and ecological vitality; and

6 “(20) comply with such other terms and condi-
 7 tions as the Secretary may require.

8 “(b) ALLOWABLE VARIANCES.—Notwithstanding any
 9 other provision of this title, no person or operation shall
 10 be determined to be ineligible for a certification under this
 11 title on the basis of a variance that—

12 “(1) is technical and minor in nature and has
 13 little effect on the ability of the person or operation
 14 to meet the standards established by subsection (a);
 15 or

16 “(2) is conducted in accordance with a tem-
 17 porary waiver (granted by the Secretary or, if appli-
 18 cable, the Governor) from the practices required
 19 under subsection (a) that cannot reasonably be ac-
 20 complished as a result of weather, a pest, or a dis-
 21 ease.

22 **“SEC. 205. COMPLIANCE.**

23 “(a) SPECIFIC TROPICAL FOREST PRODUCT OF A
 24 PERSON.—Beginning 1 year after the later of the date of
 25 issuance of final regulations to carry out this title or publi-

1 cation of a notice in the Federal Register of the Sec-
 2 retary's approval of a State tropical forest products certifi-
 3 cation program under section 207, a person may sell or
 4 label a product as a Hawaii tropical forest product that
 5 meets the standards established under this title only if the
 6 product is cultivated, harvested, and processed in accord-
 7 ance with this title.

8 “(b) ALL TROPICAL FOREST PRODUCTS OF A PER-
 9 SON.—Beginning 5 years after first receiving a certifi-
 10 cation under section 203 or 207, no person may affix a
 11 label to, or provide other market information concerning,
 12 a Hawaii tropical forest product if the label or information
 13 implies, directly or indirectly, that the product meets all
 14 or part of the standards established under this title for
 15 cultivating, harvesting, or processing unless all tropical
 16 forest products cultivated, harvested, or processed on all
 17 land owned, leased, or managed by the person and any
 18 affiliated person have been certified under section 203 or
 19 207.

20 “(c) LANDLORDS AND TENANTS.—The ineligibility of
 21 a tenant, or operation of a tenant, shall not cause a land-
 22 lord, or operation of the landlord, to be ineligible to receive
 23 a certification under this title other than for the product
 24 with respect to which the tenant has an interest.

1 “(d) STANDARDS AND SEAL.—If a forest product
 2 meets the standards established under this title, a label
 3 affixed to, or other market information provided for, the
 4 product in accordance with this section may—

5 “(1) indicate that the forest product meets the
 6 standards; and

7 “(2) on approval by the Secretary, incorporate
 8 seals that indicate that the forest product meets the
 9 standards.

10 **“SEC. 206. GENERAL REQUIREMENTS.**

11 “A program established under this title shall—

12 “(1) provide that an agricultural product to be
 13 sold or labeled as a Hawaii tropical forest product
 14 that meets the standards established under this title
 15 must—

16 “(A) be produced only on lands using prac-
 17 tices that meet the standards established by
 18 section 204; and

19 “(B) be produced and processed in accord-
 20 ance with the program;

21 “(2) require that a covered person that desires
 22 to participate in the program establish a forestry
 23 plan that meets the standards established by section
 24 204;

1 “(3) provide for procedures that allow a covered
2 person to appeal an adverse administrative deter-
3 mination under this title;

4 “(4) require each certified covered person to at-
5 test to the Secretary, the Governor (if applicable),
6 and the certifying agent on an annual basis, that the
7 covered person has not cultivated, harvested, or
8 processed a tropical forest product except in accord-
9 ance with this title;

10 “(5) provide for on-site inspection not less often
11 than annually by the certifying agent of each for-
12 estry and processing operation that is owned, oper-
13 ated, or carried out by a covered person that has
14 been certified under this title;

15 “(6) provide for appropriate and adequate en-
16 forcement procedures determined by the Secretary to
17 be necessary and consistent with this title;

18 “(7) provide that the Secretary or, if applicable,
19 the Governor be notified prior to a landowner or
20 processor commencing an action that may be incon-
21 sistent with this title;

22 “(8) prevent conflicts of interest described in
23 section 212(h);

24 “(9) provide for public access in the State of
25 Hawaii to certification documents except to the ex-

1 tent that the documents contain proprietary business
2 information;

3 “(10) provide for the collection of reasonable
4 fees from covered persons and certifying agents who
5 participate in the program; and

6 “(11) contain such other terms and conditions
7 as may be determined by the Secretary to be nec-
8 essary.

9 **“SEC. 207. STATE TROPICAL FOREST PRODUCTS CERTIFI-**
10 **CATION PROGRAM.**

11 “(a) IN GENERAL.—

12 “(1) SUBMISSION OF PLAN.—The Governor
13 may prepare and submit to the Secretary for ap-
14 proval a plan that establishes a State tropical forest
15 products certification program.

16 “(2) APPROVAL.—To be approved by the Sec-
17 retary, the program must meet the requirements of
18 this title.

19 “(b) ADDITIONAL REQUIREMENTS.—

20 “(1) IN GENERAL.—Subject to paragraph (2), a
21 program established under subsection (a) may con-
22 tain more restrictive requirements governing the cer-
23 tification of covered persons, or operations of the
24 persons, under this title than are specified in this
25 title or in the program established by the Secretary.

1 “(2) CONTENT.—Any additional requirements
2 established under paragraph (1) shall—

3 “(A) further the purposes of this title;

4 “(B) be consistent with this title; and

5 “(C) not become effective until approved
6 by the Secretary.

7 “(c) APPROVAL.—

8 “(1) PLAN REVIEW AND APPROVAL.—

9 “(A) REVIEW.—The Secretary shall review
10 a plan submitted under subsection (a).

11 “(B) APPROVAL.—The Secretary shall ap-
12 prove the plan if the plan meets the require-
13 ments of this title.

14 “(2) PERIODIC REVIEW.—The Secretary shall—

15 “(A) review a program approved under this
16 section not less often than once during each 5-
17 year period following the date of the approval of
18 the program; and

19 “(B) recommend to the State of Hawaii
20 such program modifications as the Secretary
21 considers appropriate.

22 “(3) NOTICE.—When conducting a periodic re-
23 view under paragraph (2)(A), the Secretary shall
24 publish a notice in the Federal Register that de-
25 scribes the scope of review and provides 90 days for

the public to comment on the periodic review and tropical forest certification program.

“(4) CHANGES.—

“(A) NOTIFICATION OF SECRETARY.—

Prior to implementing a substantive change to a program approved under this section, the Governor shall notify the Secretary of the change.

“(B) REVIEW.—After notifying the Secretary of the change, the Governor—

“(i) shall allow a reasonable period of time (of not less than 120 days) before implementing the change; and

“(ii) shall not implement the change if the Secretary disapproves the change during the period.

“(5) TIME FOR REVIEW.—

“(A) IN GENERAL.—The Secretary shall make a determination concerning a proposed program described in subsection (a), or a proposed change to the program, not later than 180 days after receipt of the program or change.

“(B) CONSTRUCTIVE APPROVAL.—The Secretary shall be deemed to have approved the

8 “SEC. 208. PROHIBITED PRACTICES.

14 “SEC. 209. OTHER PRODUCTION AND PROCESSING PRAC-
15 TICES.

21 **“SEC. 210. FORESTRY PLANS.**

25 “(1) the certifying agent; and

1 “(2) if a State tropical forest products certifi-
2 cation program is in effect, the Governor.

3 “(b) REVIEW.—The certifying agent and, if applica-
4 ble, the Governor shall review the plan and determine
5 whether the plan meets the requirements of this title.

6 **“SEC. 211. ACCREDITATION PROGRAM.**

7 “(a) IN GENERAL.—Subject to subsection (b), the
8 Secretary shall establish and carry out a program to ac-
9 credit officers or employees of the State of Hawaii or other
10 persons that meet the requirements of this section as cer-
11 tifying agents for the purpose of certifying covered persons
12 or operations of the persons under this title.

13 “(b) STATE PROGRAM.—The Secretary shall permit
14 the State of Hawaii to carry out a State program to ac-
15 credit certifying agents in a manner that is consistent with
16 this title.

17 “(c) REQUIREMENTS.—To be accredited as a certifi-
18 ing agent under this section, the officer, employee, or
19 other person shall—

20 “(1) prepare and submit, to the Secretary or, if
21 applicable, the Governor, an application for the ac-
22 creditation;

23 “(2) have sufficient expertise in the tropical for-
24 estry cultivation, harvesting, or processing practices

1 described in section 204, as determined by the Sec-
2 retary; and

3 “(3) comply with this section, section 212, and
4 such other requirements as the Secretary or, if ap-
5 plicable, the Governor may establish.

6 “(d) DURATION.—An accreditation made under this
7 section—

8 “(1) shall be for a period of not to exceed 5
9 years; and

10 “(2) may be renewed.

11 “(e) ACCREDITATION REPORT.—When accrediting a
12 certifying agent, the Secretary or, if applicable, the Gov-
13 ernor shall prepare an accreditation report identifying the
14 basis for determining that the agent meets the standards
15 established under this title.

16 **“SEC. 212. REQUIREMENTS OF CERTIFYING AGENTS.**

17 “(a) ABILITY TO IMPLEMENT REQUIREMENTS.—To
18 be accredited as a certifying agent under section 211, an
19 officer or employee of the State of Hawaii or other person
20 shall be able to fully implement the applicable certification
21 program established under this title.

22 “(b) RECORDKEEPING.—

23 “(1) MAINTENANCE.—A certifying agent shall
24 maintain all records concerning the activities of the

1 agent under this title for a period of not less than
2 10 years.

3 “(2) ACCESS.—A certifying agent shall allow
4 representatives of the Secretary and the State of
5 Hawaii access to each record concerning an activity
6 of the agent under this title.

7 “(3) TRANSFER.—If a person that was accred-
8 ited under this title no longer continues to act as a
9 certifying agent or loses accreditation, each record
10 (or copy of the record) concerning the activities of
11 the person under this title shall be transferred to the
12 Secretary and made available by the Secretary to of-
13 ficers and employees of the State of Hawaii.

14 “(c) CERTIFICATION REPORT.—When certifying a
15 covered person that cultivates, harvests, or processes for-
16 est products in a tropical environment in Hawaii, the cer-
17 tifying agent shall prepare a certification report identify-
18 ing the basis for determining that the covered person
19 meets the standards established under this title.

20 “(d) AGREEMENT.—To be accredited under this title,
21 a certifying agent shall enter into an agreement with the
22 Secretary under which the agent shall agree to—

23 “(1) carry out the duties of the agent under
24 this title; and

1 “(2) such other terms and conditions as the
2 Secretary determines appropriate.

3 “(e) SECURITY AND HOLD HARMLESS.—To be ac-
4 credited under this title, in addition to the agreement re-
5 quired under subsection (d), a certifying agent shall—

6 “(1) agree to hold the Secretary or, if applica-
7 ble, the State of Hawaii harmless for a failure by
8 the certifying agent to carry out the duties of the
9 agent under this title; and

10 “(2) provide reasonable security, if security is
11 determined by the Secretary or, if applicable, the
12 State of Hawaii to be necessary, for the purpose of
13 protecting the rights of participants in the applicable
14 certification program established under this title, in
15 an amount determined by the Secretary or the State.

16 “(f) COMPLIANCE.—A certifying agent shall fully
17 comply with the terms and conditions of the applicable cer-
18 tification program carried out under this title.

19 “(g) CONFIDENTIALITY.—Except as provided in sec-
20 tion 206(9), a certifying agent—

21 “(1) shall maintain strict confidentiality with
22 respect to a client of the agent under the certifi-
23 cation program; and

24 “(2) may not disclose to a third party (other
25 than the Secretary and the Governor) any business

1 related information concerning the client obtained
2 while carrying out this title.

3 “(h) CONFLICT OF INTEREST.—A certifying agent
4 shall not—

5 “(1) carry out an inspection of an operation—

6 “(A) in which the certifying agent (or an
7 employee or relative of the certifying agent)
8 has, or has had, a commercial interest; or

9 “(B) with respect to which the agent has
10 provided consultant services;

11 “(2) accept a payment, gift, or favor from an
12 operation certified or inspected, other than any pre-
13 scribed fee for a certification or inspection under
14 this title; or

15 “(3) provide advice concerning sustainable for-
16 estry practices for a fee, other than any prescribed
17 fee for a certification or inspection under this title.

18 “(i) LOSS OF ACCREDITATION.—

19 “(1) NONCOMPLIANCE.—If the Secretary or, if
20 applicable, the Governor determines that a certifying
21 agent is not complying with this title, the Secretary
22 or Governor may suspend the accreditation of the
23 certifying agent.

24 “(2) EFFECT ON CERTIFIED OPERATIONS.—If
25 the accreditation of a certifying agent is suspended

1 under paragraph (1), the Secretary or, if applicable,
2 the Governor shall promptly determine whether cul-
3 tivation, harvesting, or processing operations cer-
4 tified by the agent may retain their certification.

5 **“SEC. 213. REVIEW OF CERTIFYING AGENTS.**

6 “(a) PEER REVIEW PANEL.—

7 “(1) IN GENERAL.—To assist the Secretary or,
8 if applicable, the Governor in evaluating a person
9 who is seeking accreditation as a certifying agent
10 under this title, the Secretary may establish a panel
11 of not less than 3 individuals who have significant
12 expertise in the tropical forestry cultivation, harvest-
13 ing, or processing practices described in section 204.

14 “(2) LIMITATION.—Not more than 50 percent
15 of the members of a panel shall be employed by the
16 State of Hawaii.

17 “(b) PEER REVIEW.—In determining whether to ap-
18 prove an applicant for accreditation under this title, the
19 Secretary or, if applicable, the Governor shall consider any
20 report concerning the applicant that is prepared by a
21 panel established under subsection (a).

22 **“SEC. 214. VIOLATIONS.**

23 “(a) MISUSE OF LABEL.—A person who knowingly
24 sells or labels a product as a Hawaii tropical forest prod-
25 uct in violation of this title, except in accordance with this

1 title, shall be subject to a civil penalty of not more than
2 \$100,000.

3 “(b) PECUNIARY GAIN OR LOSS.—If any person de-
4 rives pecuniary gain from an offense described in sub-
5 section (a), or if the offense results in pecuniary loss to
6 a person other than the defendant, the defendant may be
7 fined under subsection (a) not more than twice the gross
8 gain or twice the gross loss.

9 “(c) FALSE STATEMENT.—A person who makes a
10 false statement under this title to the Secretary, an officer
11 or employee of the State of Hawaii, or a certifying agent
12 shall be subject to section 1001 of title 18, United States
13 Code.

14 “(d) INELIGIBILITY.—

15 “(1) IN GENERAL.—Except as provided in para-
16 graph (2), a person shall not be eligible, after notice
17 and an opportunity for a hearing, for a period of 5
18 years, to receive a certification under this title with
19 respect to a farm, product, or processing operation
20 in which the person has an interest, if the person—

21 “(A) makes a false statement;

22 “(B) attempts to have a label indicating
23 that an agricultural product is cultivated, har-
24 vested, or processed using the tropical forestry
25 practices established under this title affixed to

1 a product that the person knows, or has reason
2 to know, has been produced in a manner that
3 is not in accordance with this title;

4 “(C) adopts a scheme or device designed to
5 evade, or that has the effect of evading, this
6 title; or

7 “(D) otherwise violates the purposes of a
8 certification program, as determined by the
9 Secretary or, if applicable, the Governor.

10 “(2) WAIVER.—The Secretary may reduce or
11 eliminate the period of ineligibility under paragraph
12 (1) if the Secretary determines that a modification
13 or waiver is in the best interests of the certification
14 program established under this title.

15 “(e) REPORTING.—A certifying agent shall imme-
16 diately report a violation of this title to the Secretary or,
17 if applicable, the Governor.

18 “(f) VIOLATIONS BY A CERTIFYING AGENT.—A cer-
19 tifying agent that violates this title or that falsely or neg-
20 ligently certifies any cultivation, harvesting, or processing
21 activity that does not meet the terms and conditions of
22 the certification program, as determined by the Secretary
23 or, if applicable, the Governor shall, after notice and an
24 opportunity to be heard—

1 “(1) lose its accreditation as a certifying agent
2 under this title; and

3 “(2) be ineligible to be accredited as a certify-
4 ing agent under this title for a period of not less
5 than 5 years following the date of the determination.

6 **“SEC. 215. SUNSET AUTHORITY.**

7 “(a) PRIVATIZATION.—Subject to subsection (c), if
8 the Secretary or, if applicable, the Governor determines
9 that there is sufficient and demonstrated private sector
10 ability to operate a program described in section 203, 207,
11 or 211, the Secretary or, if applicable, the Governor may,
12 by rule, terminate the program otherwise established
13 under this title.

14 “(b) PETITION.—

15 “(1) IN GENERAL.—A private sector organiza-
16 tion may petition the Secretary or, if applicable, the
17 Governor to terminate the program described in sec-
18 tion 203, 207, or 211.

19 “(2) ANNOUNCEMENT OF DECISION.—Not later
20 than 120 days after receiving a petition, subject to
21 subsection (c), the Secretary or, if applicable, the
22 Governor shall announce a decision on the petition.

23 “(c) FINDING.—

24 “(1) IN GENERAL.—Prior to terminating a pro-
25 gram under subsection (a), the Secretary or, if ap-

1 plicable, the Governor shall publish a notice describ-
 2 ing the basis for determining that there is sufficient
 3 and demonstrated private sector ability to operate a
 4 program described in section 203, 207, or 211.

5 “(2) PUBLIC COMMENT.—The public shall have
 6 the opportunity to comment on the proposed termi-
 7 nation for a period of not less than 90 days before
 8 the action becomes final.

9 **“SEC. 216. ADMINISTRATIVE APPEAL.**

10 “(a) EXPEDITED PROCEDURE.—The Secretary shall
 11 establish an expedited administrative appeals procedure
 12 under which a person may appeal an action of the Sec-
 13 retary, the applicable governing State official, or a certify-
 14 ing agent under this title that—

15 “(1) adversely affects the person; or

16 “(2) is inconsistent with the certification pro-
 17 gram established under this title.

18 “(b) APPEAL OF FINAL DECISION.—A final decision
 19 of the Secretary under subsection (a) may be appealed to
 20 the United States district court for the district in which
 21 the person is located.

22 **“SEC. 217. ADMINISTRATION.**

23 “(a) REGULATIONS.—Not later than 1 year after the
 24 date of enactment of this title, the Secretary shall issue
 25 regulations to carry out this title.

1 “(b) ASSISTANCE.—

2 “(1) TECHNICAL ASSISTANCE.—To further the
3 purposes of this title, the Secretary shall provide
4 technical, administrative, and Extensive Service as-
5 sistance to the State of Hawaii and to covered per-
6 sons who cultivate, harvest, or process tropical forest
7 products.

8 “(2) FINANCIAL ASSISTANCE.—To further the
9 purposes of this title, the Secretary may provide
10 grants and other forms of financial assistance to—

11 “(A) the State of Hawaii;

12 “(B) persons who—

13 “(i) receive a certification under sec-
14 tion 203 or 207; or

15 “(ii) are certified by a private certifier
16 under a private sector program described
17 in section 215(a) after the termination
18 under section 215 of a program established
19 under section 203 or 207; and

20 “(C) persons involved in the stewardship of
21 tropical forests and forest products.

22 **“SEC. 218. PUBLIC RECORDS.**

23 “(a) MAINTENANCE.—The Secretary or, if applicable,
24 the Governor shall maintain copies of—

1 “(1) forestry plans submitted under section
2 210;

3 “(2) accreditation reports prepared under sec-
4 tion 211;

5 “(3) certification reports prepared under sec-
6 tion 212; and

7 “(4) such other records as the Secretary or, if
8 applicable, the Governor considers appropriate.

9 “(b) AVAILABILITY.—The Secretary or, if applicable,
10 the Governor shall make records maintained under sub-
11 section (a) available for inspection during hours conven-
12 ient to the public.”.

13 **SEC. 3. CROP INSURANCE PILOT PROGRAM.**

14 Section 508(h) of the Federal Crop Insurance Act (7
15 U.S.C. 1508(h)) is amended by adding at the end the fol-
16 lowing:

17 “(10) PILOT PROGRAM.—

18 “(A) DEFINITION OF ELIGIBLE PRO-
19 DUCER.—In this paragraph, the term ‘eligible
20 producer’ means a producer who—

21 “(i) receives a certification under sec-
22 tion 203 or 207 of the Hawaii Tropical
23 Forest Products Certification Act; or

24 “(ii) is certified by a private certifier
25 under a private sector program described

in section 215(a) of that Act after the termination under section 215 of that Act of a program established under section 203 or 207 of that Act.

“(B) PILOT PROGRAM.—

“(i) IN GENERAL.—The Corporation shall carry out a pilot program to insure, or provide reinsurance for insurers of, eligible producers of forest products.

“(ii) REQUIREMENTS.—The pilot program—

“(I) shall be adapted to the specific forest product; and

“(II) may insure, or provide reinsurance for insurers of, only producers who have produced a crop of the forest product for a period of less than 5 years.”.

SEC. 4. CONFORMING AMENDMENTS.

The Hawaii Tropical Forest Recovery Act (Public Law 102–574; 106 Stat. 4593) is amended—

(1) by inserting before section 2 the following:

1 **“TITLE I—HAWAII TROPICAL**
 2 **FOREST RECOVERY”;**

3 (2) by redesignating sections 2, 3, 4, and 5 as
 4 sections 101, 102, 103, and 301, respectively;

5 (3) by inserting before section 301 (as so reded-
 6 ignated) the following:

7 **“TITLE III—AUTHORIZATION OF**
 8 **APPROPRIATIONS”;**

9 and

10 (4) in section 301 (as so redesignated), by
 11 striking “sections 3 and 4” and inserting “sections
 12 102 and 103 and title II”.

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